

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND

PLACE OF MEETING: Friday, February 23, 2001, 1:30 p.m., City Council Chambers,
555 South 10th Street, Lincoln, Nebraska

MEMBERS AND OTHERS

IN ATTENDANCE:

Members: Gerry Krieser, George Hancock, Curt Olson,
Linda Wibbels, and Steve Mossman

Others: Terry Kathe (Building & Safety), Rick Peo (City
Law Dept.), Jason Reynolds and Missy Minner
(Planning Dept.), applicants and other interested
parties.

STATED PURPOSE

OF THE MEETING: Regular meeting of the City Board of Zoning Appeals

Chair Olson called the meeting to order and requested a motion approving the January 26, 2001 minutes. Motion for approval made by Wibbels, seconded by Krieser. Motion carried 5-0; Wibbels, Krieser, Mossman, Hancock and Olson voting 'yes'.

City Board of Zoning Appeals No. 2302 & 2303

Requested by Paul Sayer for a variance to average lot width on properties located at 431 South 25th Street and 441 South 25th Street.

PUBLIC HEARING

February 23, 2001

Members present: Krieser, Hancock, Wibbels, Mossman and Olson

Paul Sayer and Terry Uland, Director of Neighborhoods Inc. appeared. Neighborhoods Inc. is a non-profit organization working with home ownership promotion and targeted neighborhood redevelopment.

This is special project to provide resources to redevelop this neighborhood. Neighborhoods Inc. purchased the existing house on Lot 6 and demolished it with the desire to build two single family dwellings on these lots. They were denied a building permit, even though it would fit in with the housing across the street.

Mossman asked who is the owner of the properties. Sayer indicated that the properties are owned by Neighborhoods, Inc. He added that the issue with Lot 6 had been resolved.

Mossman was of the opinion that the Board should not vote on Lot 6 if a variance is not needed. If a variance was not granted on Lot 7, what would be their hardship?

Uland indicated that the lot is unbuildable without a variance. If they have to make the two lots into one large lot, it will make the remaining house less affordable.

Olson wanted to know when the house had been demolished. Sayer stated that it was November 13, 2000.

Hancock asked about the possibility of building duplexes on the property.

Uland indicated that NeighborhoodS Inc. typically does not develop rental properties and attached townhouses are not consistent with the existing housing in this area.

Rick Peo, City Law Dept. appeared. He indicated that his research of this matter led him to believe that Lot 6, which had a house, is a legal nonstandard use that may be continued. Since the house was demolished less than two years ago, it can be rebuilt without a variance.

Lot 7 still needs a variance to be built upon because it is not required to be merged with Lot 6. It would comply with the practical difficulty issue.

With no one further appearing, the public hearing was closed.

ACTION

February 23, 2001

Appeal # 2302 - Mossman moved to dismiss Appeal # 2302 for lack of jurisdiction, seconded by Hancock.

Mossman stated that a building permit will be granted for the lot and therefore the Board has no jurisdiction over this matter.

Motion to dismiss carried 5-0; Mossman, Hancock, Krieser, Wibbels, and Olson voting 'yes'.

ACTION

February 23, 2001

Appeal # 2303 - Hancock moved denial, seconded by Olson.

Hancock did not believe that the required criteria to grant a variance was present.

Mossman stated that the question of unreasonably restricting the owner from use of his property was present. He was against denial of the variance and would vote for approval.

Hancock stated that he is denying this variance on the assumption that lots could be used together.

Wibbels pointed out that no action was required on the first lot. Therefore, it is her position that this is to be treated as two separate lots.

Hancock added that if a permit is issued to build a building that straddles the lot line, they could build a condo or a large house.

Wibbels asked if this could be limited to a single family dwelling only. Peo answered that the requirement could be placed in the resolution.

Mossman asked the purpose of limiting this to a single family dwelling. Krieser indicated that would keep it from being changed in the future.

Hancock stated that he objects to the 42'. The City says you can't build on lots less than 50'. The Board can't change how lots were platted, it can't change the rules either.

Motion for denial failed 2-3; Hancock and Krieser voting 'yes'; Mossman, Wibbels, and Olson voting 'no'.

Mossman moved approval, seconded by Wibbels.

Krieser suggested amending the motion to limit the use to a single family dwelling. Mossman accepted the amendment.

Motion for approval limiting the use to a single family dwelling carried 5-0; Mossman, Wibbels, Krieser, Hancock and Olson voting 'yes'.

City Board of Zoning Appeals No. 2304

Requested by Nikolay Popov for a variance to the front yard setback on property located at 2343 NW 7th Street.

PUBLIC HEARING

February 23, 2001

Members present: Krieser, Hancock, Wibbels, Mossman and Olson

Nikolay Popov appeared. When he began building the new house, he asked Building & Safety how to find the property line. They told him it would 35' from the center of the road and he should then go an additional 25' beyond that point. He measured as instructed and the inspector signed off on it. Now he is ready to close on the loan and the surveyor is telling him that he is over the setback. He can't move the house, it is solid concrete.

Olson asked if he had spoken with City staff about the efforts find a way to allow this without the variance.

Popov indicated that he had, but he doesn't understand. He did everything the way they told him, now the surveyor finds the error. He doesn't feel guilty because he did what he was instructed to do and now finds out that was wrong.

Mossman clarified that the foundation inspection was approved by Building & Safety. He asked when the construction of the house was finished.

Popov indicated that it was in the spring. He has lived there for about 6 months.

Olson asked if this is a brand new house or an existing one.

Popov answered that it is brand new.

Hancock asked about the alternative ways to accomplish this without variance.

Peo stated that they looked at vacating a portion of the street to the applicant. Public Works was not necessarily in favor of that. Staff recommendation would be to grant the vacation of a portion of the right-of-way for the length of that property.

Hancock asked when the old house was torn down.

Kathe explained that he didn't have the file with him because he thought this was going to be held over until the next meeting.

Wibbels asked if this problem should have been caught at the time that Building & Safety inspected the footings.

Kathe indicated that typically the inspectors ask for lot stakes. Usually the measurement from the center of the road is used to find the lot stakes. The inspector assigned to this property was not able to be the meeting.

Wibbels asked if the footing inspection includes setbacks. Kathe answered that it does.

Wibbels stated that the applicant assumed that he was correct because the City said that he was right. If that was the way this happened, who would have to pay for the vacation and how much would that be?

Peo indicated that petitions to vacate are typically at the applicant's expense. The City could assist in preparing the petition. The City did not desire to give that 7' away.

Mossman asked if it were determined that the house that was there was non conforming, if it could be rebuilt under the code? Peo stated that non-standard / non-conforming uses are not abandoned for two years. It is possible to get a special permit for the expansion of the non-standard use.

Olson stated that it appeared that the house was demolished by October 1998. Mossman indicated that it would seem the options for the applicant are variance or vacation.

Olson asked if the Board has jurisdiction over this matter.

Peo indicated that was debatable. The Planning Director didn't feel they have jurisdiction, however his review of case law found mixed results.

Wibbels asked who is liable for rectifying the problem if the error was made when the footings were inspected and approved.

Peo indicated that he would need to look at the Tort Claims Act before he could answer that. The applicant's recourse would be to seek an injunction against the City if it enforces the setback.

Olson stated that the Board needs to come to the correct conclusion not based on who is responsible.

Peo offered to research this further and suggested that it could be put on pending while the other options are pursued.

With no one further appearing, the public hearing was closed.

ACTION

February 23, 2001

Olson suggested the Board table this matter for up to 3 months.

Wibbels asked why three months. The applicant is prevented from closing on his real estate loan until this is settled.

Hancock felt that making a decision as to what the best procedure is could be done sooner, even though carrying that procedure out may take that long. If this were held over to the next meeting, they may have enough information to proceed with the closing.

Mossman asked what position the applicant will be in legally between now and the next meeting.

Peo indicated it will remain status quo.

Members requested records of the inspection and/or the inspector be at the next meeting. They also asked for some specific solutions to this problem.

Peo indicated that the vacation costs could probably be reduced so there would not be much value to the property to be transferred.

Hancock asked if the 2 years was until the application was made or until now.

Peo indicated that the 2 years doesn't necessarily expire as long as you can show the project is moving forward.

Olson moved to table this action until the next meeting, seconded by Hancock. Motion to table carried 5-0; Mossman, Wibbels, Krieser, Hancock and Olson voting 'yes'.

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